



## **The First-tier Tribunal (Property Chamber) (Agricultural Land and Drainage) Practice Statement 2013**

### **Part 1: Preliminary**

1. This Practice Statement explains the practice of the Property Chamber of the First-tier Tribunal in agricultural land and drainage cases. It supplements the Tribunals, Courts and Enforcement Act 2007, the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") and any applicable Property Chamber Practice Direction.
2. In this Practice Statement:
  - (1) expressions have the same meaning as in the Rules, and any reference to a "Rule" is a reference to one of the Rules;
  - (2) "tribunal directions" means procedural directions made in the proceedings by a full tribunal or by a tribunal judge (or by tribunal staff under Rule 5);
  - (3) "Form" and "Guide" refer to a form or guide provided by the tribunal or for the time being downloadable from the Property Chamber webpages;
  - (4) "working days" excludes weekends, Christmas Day, Good Friday and bank holidays.
3. This Practice Statement is subject to tribunal directions made in the proceedings.
4. The parties must help to further the overriding objective stated in the Rules and must cooperate with the Tribunal generally. If a party unreasonably fails to comply, an application for an order for costs might be made against him.

### **Part 2: General Procedures**

#### **General requirements**

5. Whenever possible the parties should
  - (1) use the appropriate tribunal Forms;
  - (2) follow the tribunal Guides;
  - (3) comply with the requirements of notices received from the tribunal, and
  - (4) comply with this Practice Statement.
6. If a party fails to complete a tribunal Form adequately or fails to provide the required accompanying documents, the case officer can request him to provide a fully completed

amended version of it or to provide the missing documents to the Tribunal and other parties as soon as possible.

### **Alternative dispute resolution**

7. The parties are strongly encouraged to assess the merits of their cases as soon as possible and to discuss with one another whether the proceedings can be resolved without resort to the expense of experts or a hearing. They can at any time jointly request a short suspension of proceedings for an attempt to resolve some or all of their differences by negotiation, mediation or other means of alternative dispute resolution; but they must keep the tribunal office regularly informed as to whether there is a genuine prospect of resolution, with estimated timing to the end of negotiations.

### **Documents and information with Notices of Application etc.**

8. Maps and plans accompanying a Notice of Application or Response must, in addition to complying with the Rules, show clearly the location, boundaries and relevant features of all properties relevant to the proceedings.
9. Every Notice of Application or Response must so far as possible give the full names and addresses of everyone interested in the proceedings (including of all trustees) if not already given to the tribunal.
10. Any document that should be personally signed for the purposes of the proceedings should be signed before being copied to the tribunal and other parties.

### **Representatives, contact and other details**

11. Every Notice of Application and Response includes a section that asks for representative contact details. If this should change, either a Representative, Contact and Details form with who the new representative is must be delivered to the tribunal and all other parties or the tribunal should be notified in writing of the change.

### **Copying, automatic disclosure and qualified use of documents**

12. Copies of maps, plans and other documents must:
  - (1) show the same colours as their originals.
  - (2) if the originals are substantially larger than A4 in size, be full scale copies and delivered by post (or by hand) within three working days after any delivery by scan attached to an email or by fax.
13. If a party ("the requesting party") requests another party to provide a copy of a document that is evidence in relation to a matter which is mentioned in any Notice of Application, Response or Reply but is not agreed, the other party must,
  - (1) promptly provide the requested copy without awaiting a tribunal direction, or
  - (2) promptly inform the requesting party of his reasons for not doing so. Then the requesting party can decide whether to apply to the tribunal for procedural directions, so that the reasons can be considered.

14. If a document is in electronic form, it should initially be copied or made available for inspection in an accessible electronic form; but hard copies should be provided upon request, unless it is unreasonable or disproportionate to be required to do so.
15. While not in the public domain and not quoted in a publicly available tribunal decision, a document that is disclosed for the purposes of the proceedings must not (without the permission of the disclosing party) be shown, passed or copied to anyone except only for the purposes of the same or associated proceedings between the same parties.

### **Sending documents**

16. All Notice of Application Forms, Response Forms and any accompanying documents should be either sent by post or hand delivered to the tribunal office. You should also include an additional copy of your Notice of Application or Response Form and any accompanying documents for the use of the tribunal.
17. Thereafter, except where otherwise required or requested or there are exceptional circumstances that have been explained to the tribunal, every party:
  - (1) must, whenever possible, communicate with the tribunal by email; and
  - (2) must make sure that every email and other communication to the tribunal is at the same time copied by email (or by post or by hand) to all other parties (or their representatives appointed for the purposes of the proceedings) and must inform the tribunal that this is being done, for example by marking it "cc." followed by their name.
18. In the event of a disagreement about whether or when a document was delivered, the burden of proving the delivery rests on the sender. The sender can re-deliver it if the intended recipient claims that he has not seen it, and (where relevant and possible) apply for an extension of time.
19. The sender should:
  - (1) when emailing, select the option for a "delivery receipt";
  - (2) when posting, send by first-class pre-paid post and obtain and keep a certificate of posting;
  - (3) when delivering to an office by hand, do so in office hours and request and keep a delivery receipt; and
  - (4) when faxing, keep a record of the faxing.
20. Every email must state clearly who is its author, if, for example, it is sent from the email address of someone else, such as a secretary or assistant.

### **Requests for procedural directions**

21. Parties should try to agree what procedures to follow to ensure that the proceedings are prepared for a hearing with no or minimal tribunal directions, and should regularly inform the tribunal office of what preparatory steps they are taking and are intending to take and what progress is being made.

22. Whenever possible a request for procedural directions should be made on the tribunal's Request for Directions Form. These can include directions giving permission or directing a summons to require a person to attend as a witness or making an order to a person to answer questions or produce documents that are in that person's possession or control which relate to any issue in the proceedings.
23. Every request must give reasons. Every response to the request (or reply to a response) must state what in the request (or response) is agreed and, if anything is not agreed, must give reasons.
24. Every such request, response and reply must be made to the tribunal promptly and must be copied by the fastest reasonable means to all other parties at the same time as, or before, delivering it to the tribunal. The tribunal must be informed that this is being done, for example, by marking the request "cc." with the names of the parties. Otherwise the tribunal can decide to wait until it has confirmation that the copies have been delivered.
25. If a request is for additional time or if any responding party wants to ask for additional time to respond to the request, the responding party must deliver his response or ask for additional time within 2 working days of receiving the request.
26. Every other response to a request for directions (or for a required permission) must be delivered within 5 working days of receiving the request unless the tribunal allows additional time for doing this. Any reply to any response must be delivered within 2 working days of receiving the response unless the tribunal allows additional time for doing this.
27. If a party does not deliver a response, or a reply to a response, within the time mentioned above (or within any additional time allowed by the tribunal), the tribunal may decide to proceed without them.

### **Witness statements**

28. Witness statements (for the parties themselves and for their other witnesses) should be prepared as soon as possible. Each must include a statement of truth in the form "I believe that all the facts stated in this witness statement are true".
29. Where the experts might need to see the witness statements before they can complete their reports, the witness statements should be exchanged before the time when the expert reports should be prepared.
30. Witness statements must be signed before being copied into the hearing bundles, and the signed originals must be brought to the hearing.

### **Experts**

31. The parties should consider whether in any area of expertise the expert evidence can reasonably be limited to one expert jointly instructed by them, especially in cases where more than one area of expertise is involved.

32. A party cannot rely on the report of an expert, nor call the expert as a witness at the hearing, unless the tribunal has given permission and the expert has delivered the report to all parties. If a contested hearing becomes likely, each party should promptly request this permission, stating the nature of the expertise and when each report can be delivered. The request for permission should be made on the tribunal's Request for Directions Form.
33. Subject to adjustment to accommodate tribunal procedures and practice, guidance on instructing experts may be found in the Civil Justice Council's 'Protocol for the Instruction of Experts to give Evidence in Civil Claims'. Instructions to the expert should request compliance with the Rules and with this Practice Statement.
34. The parties and occupiers should allow the other parties' experts (and in succession cases the official expert) access to inspect relevant land by agreed appointment or on reasonable notice or promptly inform the expert or the party engaging him of the reason for not allowing access. The expert should not enter property without the clear previous permission of the occupiers. The inspection should usually be on a working day, not at a weekend. Notice of 7 days or more is usually considered reasonable; but an appointment can be whenever the occupier and the expert agree. If anyone does not allow, or impedes (physically or by conditions), the reasonable inspection by an expert, any party or the expert can request the tribunal to make procedural directions requiring access to be given with a view to dealing with the case fairly and justly.
35. Every expert's report must:
- (1) be addressed to the tribunal and contain a statement that he understands his duty as an expert to help the tribunal on matters within his expertise and he understands that this duty overrides any obligation to the person from whom the expert has received instructions or by whom the expert is paid;
  - (2) contain a summary of the substance of his instructions;
  - (3) contain details of his expert qualifications and relevant experience;
  - (4) record or fairly summarise all relevant observations, measurements and information received and the source of each;
  - (5) make clear which facts are within his knowledge and whether any observations and measurements were of another person working with or for him or separately and in what capacity;
  - (6) include details of all reports, research papers, comparables and other sources of information or opinion which the expert has considered or on which he relies;
  - (7) explain reasons for his opinions and, where there is a range of opinions that could be reasonably held, explain the range of opinions;
  - (8) summarise his conclusions and set out any recommendations;
  - (9) state and explain any qualification to these opinions, conclusions and recommendations;
  - (10) state whether, except as an expert in the proceedings, he (or any entity with which he has ever had an involvement) has ever had any business or other connection with any party to the proceedings (including his current client) and whether he has a financial or other interest in the outcome of the proceedings, and, if so, provide details;

- (11) Contain the words “I believe that the facts stated in this report are true and that the opinions expressed in it are correct”.
36. An expert must respond to any relevant and proportionate written questions that are promptly addressed to him by any party or give his reasons for not responding to the question. The party can then decide whether to apply to the tribunal for directions.
37. Opposing experts for the parties should meet without prejudice (on the basis that what they say to one another at the meeting will not be mentioned to the tribunal) as often as is appropriate, and in any event not later than one month after they have prepared their draft or initial reports (whether or not disclosed),
- (1) to narrow issues of fact and opinion relating to or within their areas of expertise, and
  - (2) to provide to the tribunal and the parties a joint written statement or schedule of matters (including facts, plans, photographs, comparables, data and issues) within or related to their areas of expertise that they agree, and do not agree, and a summary of the reasons why they do not agree.
38. Any expert can request the tribunal to make directions to assist him in carrying out his functions.
39. The tribunal will not allow cross-examination of an expert on the contents of his instructions unless
- (1) the party who gave the instructions consents, or
  - (2) the tribunal is satisfied that there are reasonable grounds to consider that the summary given is inaccurate or incomplete and that the cross-examination appears to be in the interests of justice.
40. The tribunal can direct that experts give evidence concurrently at the hearing on issues that are specified in an agenda agreed by the parties or specified by the tribunal. The procedure for this will be led by the judge and as the tribunal directs. It usually includes questions from the Tribunal, questions and comments between the experts and questions by the parties to test or clarify an expert's view, without cross-examination or re-examination on matters that have already been covered or will be separately covered.

### **Experts as advocates**

41. A party who is considering whether to engage an expert witness as his advocate should ask the expert, or a legal adviser, to explain the advantages and disadvantages of this and to explain the different knowledge, skills and duties required and the extent that the expert engaged as an advocate could then be considered an independent expert.

## **Preparation for hearings**

42. Negotiations between the parties should not, for long, delay preparations for the hearing, such as finding, disclosing and copying relevant documents, maps and accounts to other parties; preparing witness statements; and taking the several steps in getting expert evidence and clarifying areas of expert dispute.
43. The parties should take active steps to prepare for the hearing even if negotiations are still ongoing.
44. The tribunal can allow postponement of preparations for the hearing, or of the hearing itself, where other related legal proceedings are ongoing and the tribunal considers that it is in the interests of justice to do so. If so, the parties who have knowledge of the related legal proceedings must keep the tribunal regularly informed of their progress and likely timeframe and must inform the tribunal of their outcome.
45. Unless the tribunal has directed postponement of preparations, the parties should from two months after provision of the Response or Responses keep the tribunal regularly informed of their state of preparation for a hearing.

## **Contents of hearing bundles**

46. The parties should make their best efforts to agree on the contents of the hearing bundles. The bundles must be appropriately arranged as explained below, avoiding duplication and excluding documents that are not material to the outstanding issues.
47. The bundles must be page numbered (on the same corner of each page) and arranged in tabbed sections corresponding to the following or similar categories,-
  - (1) the Notice of Application, Response(s), and any Reply;
  - (2) procedural directions;
  - (3) relevant title deeds, tenancy agreements and similar title documents;
  - (4) correspondence and documents on which any party wishes to rely;
  - (5) signed witness statements, including for the parties themselves (but these should omit exhibited or annexed correspondence and documents that are elsewhere in the hearing bundles);
  - (6) expert reports, with colour copies of all coloured plans drawings or illustrations (but these should omit exhibited or annexed correspondence and documents that are elsewhere in the hearing bundles);
  - (7) statements made in response to or in relation to the official expert's report;
  - (8) the expert's joint statement or schedule of matters agreed and not agreed by them; and
  - (9) relevant papers from any associated litigation (including any relevant decision, direction or order).
48. The documents within each tabbed section should be arranged in date order (earliest at the front). The files in the agreed or common bundles must be separately identifiable (marked for example, C1", C2" etc.) and must be page numbered (for example "C1/001", "C1/002" etc). There should be an index at the front of each bundle. Copies of

any coloured plans, drawings, diagrams, illustrations or other documents must be good colour copies.

49. If, despite their best efforts, the parties cannot agree all of the contents of hearing bundles, they must prepare bundles that they can agree (the common bundles) and bundles of their own that they cannot agree, while still arranging to avoid duplication wherever possible. All hearing bundles should follow the same arrangements as set out above, except that in the applicant's bundles the pages should be numbered A1/001, A1/002, A1/003 etc. and in the respondent's bundles R1/001, R1/002, R1/003 etc or in another distinguishing manner.

### **Timing of hearing bundles**

50. Early preparation of hearing bundles with finalised page numbering also facilitates the production of good outline arguments by self-representatives and advocates. This can reduce the time, cost and expense of the hearing.
51. Unless the tribunal otherwise directs, the parties must make sure that four complete copies of the hearing bundles arrive at the tribunal office no less than 8 working days (as defined above) before the start of the tribunal's inspection of land or hearing. If the matter is complex or there are many documents, the parties should deliver the bundles sooner.
52. The hearing tribunal needs to receive the hearing bundles in good time to read them before the inspection or hearing. Late delivery of the bundles can cause delay, interruption or adjournment of the hearing. The tribunal can make an order for costs against a party who unreasonably fails to deliver, or impedes the delivery of, properly arranged hearing bundles in good time.
53. The parties must arrange that a copy of every hearing bundle is brought to the hearing for the witness table, in addition to copies for themselves.
54. The parties must also bring to the hearing the original documents that are copied in the hearing bundles, in case the tribunal needs to see any of these in the course of the hearing. These should include original maps, plans and drawings and original signed Forms, witness statements and experts reports.

### **Updating details and arranging hearings**

55. The parties must make sure that they keep the tribunal and the other parties updated on all contact, representative and other details given on the tribunal's Representative, Contact and Details Form. This can be done by delivering a replacement Representative, Contact and Details Form to the tribunal and the other parties.
56. As soon as possible (and in any event within 5 days) after a notice or request from a case officer who is arranging a hearing, each party must complete and deliver to the tribunal and to the other parties the tribunal's Attendance Information Form and provide dates of (and reasons for) non-availability of participants. Any change of these details must be notified to the case officer immediately.



## **Actions on Notice of Hearing**

57. When the tribunal gives a Notice of Hearing, every party must:
- (1) within 5 working days deliver to the tribunal and to the other parties a completed Attendance Information Form, if this has not already been done or if any details in it have been changed;
  - (2) urgently complete any disclosure of documents;
  - (3) make sure that every witness statements contains a statement of truth and is signed in time to include in a hearing bundle;
  - (4) co-operate with the other parties in the production of suitable hearing bundles as described above or in compliance with any tribunal direction;
  - (5) deliver the required number of hearing bundles to the tribunal office in compliance with the timing mentioned above or any tribunal direction;
  - (6) Inform the case officer immediately of any concerns or objections relating to the proposed inspection of the land by the tribunal in accordance with the ALD Protocol for Inspection of Land.

## **Skeleton arguments and legal texts**

58. Every advocate (or individual representing himself) should prepare a concise outline of arguments on outstanding issues (otherwise known as a "skeleton argument"). The outline or skeleton argument for the applicant should be accompanied by a brief chronology of key events.
59. The outline or skeleton arguments and the chronology should be delivered to the tribunal office and to all other parties so that these are received no less than 4 working days (as defined above) before the hearing.
60. If possible, the outline or skeleton arguments should be delivered by email and flagged "!" for High Importance.
61. The advocates and self-representatives must bring to the hearing their bundles (sufficient for the tribunal, opposing representatives and self representatives) containing copies of relevant legal texts, rules and regulations and official guidance, that are not already included in the hearing bundles. The tribunal will bring copies of its procedural rules to the hearing for its own use.

## **Procedure at the hearing**

62. The parties can attend the hearing and can be represented or can represent themselves, but the tribunal should previously have been told of the names of the representatives and details of other participants. If time allows, this should be done on the Attendance Information Form.
63. A party can be accompanied at a hearing by another person whose name and address has not been notified to the tribunal as that of a representative but who, with the permission of the tribunal, can act as a representative or otherwise assist in presenting the party's case at the hearing.

64. The tribunal conducts the hearing in the manner it considers best suited to clarify the issues and achieve a fair and just hearing, having regard to any applicable burden and standard of proof and the overriding objective stated in the Rules. The tribunal will seek to avoid undue formality. At the beginning of any hearing the judge usually explains the likely sequence of events, unless all parties are represented by lawyer advocates who should have ensured that this has already been explained their clients and witnesses.
65. The usual sequence of submissions and evidence at the hearing is:
- (1) The applicant or the applicant's advocate will make an opening statement, to which other parties or their advocates can be allowed to make an initial response to clarify the main outstanding issues;
  - (2) The witnesses for the applicant(s) give evidence;
  - (3) The other parties or advocates can be allowed to make fuller opening statements;
  - (4) The witnesses for the other parties give evidence;
  - (5) Closing statements are made by the applicant or the applicant's advocate and by the respondents or their advocates in such sequence as the parties agree or the tribunal directs.
66. Subject to any direction by the tribunal, the parties can give evidence, call witnesses, question witnesses and address the tribunal; but they cannot rely on the report any expert, nor call the expert as a witness at the hearing, without the permission of the tribunal.
67. The tribunal can receive evidence whether or not it is admissible in a civil court. Evidence can be given orally, on oath or on affirmation or otherwise, or by affidavit, statutory declaration or witness statement or by production of documents; but the source or reliability of evidence that is not of an eye witness, or not given orally, could need to be proved. The tribunal can by summons require any person to attend as a witness, or any person to answer questions or produce any documents in that person's possession or control which relate to the proceedings.
68. The hearing is usually held in public, but the parties can agree or the tribunal can direct that witnesses (other than the parties and the experts) remain outside the hearing room until they give evidence.
69. The tribunal can exclude from the hearing any person in the circumstances specified in the Rules, for example where that person is likely to disrupt the hearing or to prevent another person from giving evidence or making a submission freely.

### **Attendance and non-attendance**

70. It is usually in a party's interests to attend the hearing so that the tribunal hears all representations and evidence on all disputed matters, directions and orders. Any party in doubt as to what to do should seek professional advice.
71. A party who does not intend to be present or represented at the hearing can deliver to the tribunal office additional written representations or evidence in support of his

case. At the same he must deliver copies to the other parties and state that he has done so.

72. The tribunal can proceed with the hearing in the absence of a party in circumstances set out in the Rules. Before disposing of any matter in the absence of a party, the tribunal will consider the Notice of Application, any Response and any Reply and any written representation or statement or other evidence supplied.
73. Written representations or evidence supplied in this way do not necessarily have the same weight as when given in person and tested by questions. If a statement or letter refers to what another person said about something, this will usually be less persuasive than the other person giving evidence in person at the hearing.
74. If a party fails to attend or be represented at a hearing, the tribunal can, if it is satisfied that the party was duly notified of the hearing and there is no good reason for such absence:
  - (1) hear and decide the application or question in the party's absence, or
  - (2) adjourn the hearing; or
  - (3) give directions and make other orders as it considers appropriate.

### **Decision and consent decision**

75. The tribunal can give its decision orally at the hearing. It will issue a formal decision notice later. The formal decision will be in writing and, unless given by consent, will usually include written reasons.
76. If the parties request a decision by consent, they must first provide an unsigned draft to the tribunal for approval. Some precedents for decisions by consent are on the Property Chamber ALD webpages or copies can be obtained from the tribunal office.

### **Costs**

77. The tribunal can make orders as to costs as provided in the Rules where, for example, a party has acted unreasonably in bringing, defending or conducting the proceedings. An order for costs can be made where a party has acted frivolously, vexatiously or oppressively in starting, or in connection, with the proceedings.
78. If an open offer (or an offer marked or described as "without prejudice save as to costs" or "Calderbank" or similarly) was not accepted, the tribunal's decision on costs can be affected. An order for costs can be made where the tribunal considers that a failure to accept an offer or to respond to it in a constructive manner was unreasonable having regard to the circumstances at the time and having regard the subsequent course or outcome of the proceedings.
79. An application for an order for costs can be made at any time during the proceedings but not later than 28 days after the date that the tribunal
  - (1) sends a decision notice recording the decision which finally disposes of all issues in the proceedings, or
  - (2) sends notice of consent to a withdrawal which ends the proceedings.

80. The amount of costs ordered to be paid may be determined by agreement or by the tribunal on a summary or detailed assessment (including the costs of the assessment). Or the tribunal can direct that application for detailed assessment can be made to the County Court.

### **Correction, setting aside or reviewing decisions; appeals and stays**

81. The procedures for correcting, setting aside, reviewing, appealing and in the meantime suspending or staying tribunal decisions are governed by statutes and the Rules. A Guide to these procedures is available on the Property Chamber ALD webpages and should accompany every substantive written decision.

## **Part 3: Special procedures in ALD CASES**

### **Succession and notice to quit cases under the Agricultural Holdings Act 1986**

82. If the tribunal makes a succession direction under section 39 or 53, or consents to the operation of a notice to quit under section 44, of the 1986 Act after three months next before the original relevant time, or next before the date on which notice to quit purports to terminate the tenancy ("the original operative date"), the tenant is (unless otherwise stated in writing to the tribunal) treated as having made an application under section 46(2) or 55(8) or 44(6) of the 1986 Act for a direction specifying the relevant time, or the date on which the notice purports to terminate the tenancy, as the next usual quarter day within 3 months next after the original relevant time, or next after the original operative date, or such other date within the same 3 months as the tenant requests.
83. The decision of the tribunal in a succession case or a case relating to a Notice to Quit is treated as including a provision that, in the event of an application for permission to appeal (or for a decision of the tribunal to be corrected or set aside), a party can at the final conclusion of the proceedings request the tribunal to specify or re-specify a relevant time for succession or date for the operation of the notice to quit.

### **Official expert procedures**

84. An "official expert" is an expert appointed by the Secretary of State in a succession case to make a net annual income assessment under Schedule 6 to the 1986 Act or in a drainage case to report on drainage matters.
85. In cases where an official expert report will or might be provided, a respondent can in his Response reserve his final position on matters that he reasonably anticipates will be considered in the official expert's report.
86. A request for an official expert's report should be routed through the Tribunal and usually should not be made until

- (1) the parties have completed disclosing all documents on which they or their opponents rely and any witness statements containing information that the official expert should see before compiling his report; and
  - (2) the parties confirm to the tribunal that negotiations have taken place but have ceased pending receipt of the official expert's report.
87. The official expert can provide his reports to the tribunal by email (with an additional hard copy for the tribunal by post) and with hard copies for the tribunal to forward by post to all parties for whom (or for whose representatives) the tribunal has not been given email addresses.
88. When an official expert provides a report, the following signed statements or joint statements must be delivered to the tribunal and at the same time copied to the other parties, informing the tribunal that this is being done, for example, by marking the statement "cc." and the names of the persons to whom the statement is being copied.
  - (1) Within one month of receiving the official expert's report, the applicant must provide a statement stating what parts of it he accepts and what parts he does not accept and why he disagrees.
  - (2) Then, within three weeks of receiving the applicant's statement, each respondent must provide a statement or letter in response stating what parts of the official expert's report and of the applicant's statement he accepts and what parts of them he does not accept and why he disagrees.
  - (3) Then, within two weeks of receiving each respondent's statement, the applicant can provide a signed statement in reply to that statement.
89. Then the following procedure applies:
  - (1) Then, the official expert may provide a supplementary report (or he should notify the tribunal that he will for the time being not be providing a supplementary report); the tribunal will then inform the parties.
  - (2) Then within three weeks of any party who wants to rely on the evidence of an expert to challenge the official expert, he must request the tribunal's permission to rely on his proposed expert with a short description of the nature of the challenge; the request should be made on the tribunal's Request for Procedural Directions Form.
  - (3) A copy of every party expert report must be delivered direct to the official expert and the other parties, as well as to the tribunal, and the tribunal must be informed that this has been done.
  - (4) Then the official expert can provide a supplementary (or second supplementary) report or he should inform the tribunal that he is not doing so.
  - (5) Then the tribunal will allow the parties one month (or such other period as the Judge directs) for them to review the merits of their cases and to discuss with one another whether the proceedings can be resolved without resort to the expense of a hearing.
  - (6) Then the parties must prepare the case for a hearing and request a hearing date.

## Drainage cases

90. With the consent of the applicant, the tribunal can direct that an application under section 28 or under section 30 of the Land Drainage Act 1991 is to be treated as an application under the other section or under both of them.
91. The Notice of Application in a drainage case must be accompanied by a combined map showing all relevant ownerships and boundaries, the ditch and other relevant watercourses, culverts and pipes.
92. If the report of an official expert is requested in a drainage case, all parties must within 3 weeks deliver to the tribunal two, high quality, hard copies (one of which the tribunal will forward to the official expert) of
  - (1) their registered titles and other deeds that show
    - i) the position of relevant boundaries, ditches, pipes and watercourses, and
    - ii) any drainage and other relevant water rights and obligations; and
  - (2) any known plans and maps that show the specifications and locations of any relevant drainage or similar works.
93. Where the official expert considers that he is able to do so in drainage cases, he should include any appropriate recommendations in his report. The tribunal will take account of these but is not bound by them.
94. The tribunal may make an order without a hearing in a drainage case if
  - (1) the official expert's report recommends that a specified party to the proceedings should be required or authorised to carry out specified work and be authorised to enter specified land for that purpose, and
  - (2) the specified party and every person (if any) who is an owner or occupier of the specified land has notified the tribunal in writing of his acceptance of the recommendation, and
  - (3) every other party (if any) has either
    - i) notified the tribunal in writing of his acceptance of the recommendation; or
    - ii) failed to deliver a Response to the tribunal; or
    - iii) withdrawn his Response.
95. If a drainage case is still contested after completion of the procedure described above following receipt of the official expert's report and receipt of any reports of experts engaged by the parties, the tribunal can ask the body that would be authorised to carry out the remedial work (in the event of a failure by a respondent to do it) for its observations on the practicalities and potential implications of carrying them out (at the respondent's expense) as proposed by the applicant or by any respondent or as recommended by the official expert. The request to the drainage body must be accompanied by copies of the Notice of Application, Responses, Replies, official expert's reports, the statements following the official expert's initial report and the party expert reports.
96. Unless the tribunal otherwise directs, a decision by the tribunal under section 28 or section 30 of the Land Drainage Act 1991 is a decision on a preliminary issue on the known facts at that time and subject to permission to apply for a variation or other order

(for example as to details of, or timing of, or access to, the works) where the tribunal considers necessary in the interests of justice. Any request for a variation or other order must set out details of the proposed variation and clear reasons why it is said to be justified. Where appropriate, the tribunal can interpret the request as including an application under the Rules for the decision to be corrected, set-aside, or reviewed or for permission to appeal.

### **Inspection of the land in ALD cases**

97. The parties and occupiers should allow the other parties' expert(s) and the official expert to inspect relevant land by agreed appointment or on reasonable notice. Usually the inspection should be on a working day, not at a weekend, and usually a week's notice is considered reasonable; but an appointment can be whenever the occupier and the expert agree. If anyone does not allow, or impedes, the reasonable inspection of the land by an expert, the expert or any party can request the tribunal to make procedural directions.
98. Subject to the directions of the tribunal, all persons attending the tribunal's inspection of the land in ALD cases must observe the requirements of the ALD Protocol for the Inspection of Land and must take all appropriate biosecurity precautions.
99. Any owner or occupier who has concerns or objections relating to the inspection of the land by an expert or by the tribunal must inform the case officer immediately so that the judge or tribunal can consider whether any procedural directions are appropriate.

### **Attendance of official and other experts at hearings in ALD cases**

100. Unless the tribunal otherwise directs (for example, where the expert evidence is not materially disputed),
  - (1) the official expert in an ALD case will attend the hearing to assist the tribunal and to answer questions of the tribunal and the parties; and
  - (2) the parties' experts in an ALD case are expected to attend the hearing.